

STATE OF INDIANA ) IN THE MARION COUNTY \_\_\_\_\_ COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO. ~~49D050406~~ PL 001094

STATE OF INDIANA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FORD MOTOR CREDIT COMPANY, )  
a Delaware Corporation, and [FORD DEALERS], )  
 )  
Defendants. )

FILED  
5 JUN 22 2004  
Clerk of Court  
Marion County, Indiana

**CONSENT JUDGMENT PURSUANT TO STIPULATION**

Plaintiff, having filed its Complaint herein, and Defendants, Ford Motor Credit Company (hereinafter, "FORD CREDIT") and FORD DEALERS, see list at paragraph two, infra, herein as if set forth in its entirety, having accepted service thereof; and Plaintiff appearing by and through its attorney Steve Carter, Attorney General of Indiana; and Defendant FORD CREDIT, through its counsel Curtis W. McCauley, Esq., and Defendant FORD DEALERS appearing in *propria persona*; and

Plaintiff and Defendants having stipulated and consented by the entry of this Consent Judgment prior to the taking of any proof, and without trial or adjudication of any fact or law herein, and without this Consent Judgment constituting any admission by Defendants regarding any issue of fact or law alleged in said complaint; and in summary, Plaintiff alleges that from and including 1991 through 1994 Ford Motor Credit Company did not always disclose lease payoff information to consumers who were terminating a lease prior to the full scheduled lease term and that FORD CREDIT directed the consumers to FORD DEALERS. Plaintiff further alleges that some dealers made undisclosed profits by inflating the payoff figures and retaining the excess.

The allegations are fully set forth in the complaint. Defendants make no admissions regarding any issue of fact or law alleged in Plaintiff's Complaint. FORD CREDIT represents that since 1995 it has made reasonable efforts to make sure that its policy of providing requested payoff information has been complied with. Further, FORD CREDIT has agreed to modify its procedures, so that consumers who want to early terminate their lease and purchase the lease vehicle will be able to obtain a purchase quotation from it.

The Court having considered the pleadings;

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff has Consent Judgment against Defendants as follows:

1. This action is brought under the law of the State of Indiana and this Court has jurisdiction of the subject matter hereof and the parties hereto.

2. Except as otherwise specifically provided, the provisions of this Consent Judgment are applicable to Defendant FORD CREDIT, Defendant Ford and Lincoln-Mercury Dealers, consisting of ADVANTAGE FORD L-M SALES & SERVICE INC.; BARILE FORD, INC.; TOWN & COUNTRY FORD, INC.; and to their successors, officers, employees, agents and representatives, and all persons who are acting in concert or participation with any of them with actual or constructive notice of this judgment.

3. Defendant FORD DEALERS are hereby permanently enjoined and restrained from making any untrue or misleading statement in connection with the early termination of a lease contract for any motor vehicle.

**DEFINITIONS APPLICABLE TO MONETARY RELIEF**

4. Unless otherwise specified, the following shall apply:

a. "ADMINISTRATOR" as used herein shall mean Gilardi & Co., 1115 Magnolia Avenue, Larkspur, California 94939, which company shall be appointed by the Court as an Officer of the Court to supervise the Restitution Program.

b. "POTENTIAL RESTITUTION ELIGIBLE CUSTOMER" as used herein shall mean any person who leased a motor vehicle from Defendants in the State of Indiana and terminated the lease early, prior to the expiration of the full original written term of the lease, in the State of Indiana, which termination occurred in the years from and including 1991 through 1994, inclusive.

c. "RESTITUTION ELIGIBLE CUSTOMER" as used herein shall mean any POTENTIAL RESTITUTION ELIGIBLE CUSTOMER who completes, certifies, and returns to the ADMINISTRATOR the Questionnaire and Release provided for herein, and who answers the questions therein in the following manner; the customer must indicate that, after January 1, 1991, the customer terminated a lease for a car or truck with Ford Credit before its expiration date; that before terminating the lease, the customer did not get a quotation or the adjusted balance of the lease directly from Ford Credit; that the customer did receive a "payoff" quotation from the Ford or Lincoln-Mercury dealer or any other Dealer; that the customer did not understand that the quotation received included both an amount to pay off the remaining lease obligation and an amount subject to negotiation for the purchase price of the car; and that the customer purchased the leased vehicle for future use or for use as a trade-in as part of a new vehicle lease or purchase. Persons who leased a motor vehicle from Defendants in the State of Indiana and terminated the lease early, prior to the expiration of the full original written term of the lease in State of Indiana which occurred in the years of 1995 through the date of entry

of this Consent Judgment, inclusive, may participate in the relief provided by this Consent Judgment if they abide by the same procedures as specified herein including the timely submission of a completed Questionnaire and Release. These persons will not receive direct notice of this Consent Judgment.

## **REFUND**

### **General Provisions**

5. Defendant FORD CREDIT shall make refunds available on a statewide basis to all POTENTIAL RESTITUTION ELIGIBLE CUSTOMERS.

6. Within ninety days of the date of this Consent Judgment Defendant FORD CREDIT shall provide to the ADMINISTRATOR a list of all POTENTIAL RESTITUTION ELIGIBLE CUSTOMERS.

7. Each POTENTIAL RESTITUTION ELIGIBLE CUSTOMER will be sent a Questionnaire and Release by the ADMINISTRATOR, which shall be printed on two sides of one document. The Questionnaire and Release shall include a questionnaire the form shown in paragraph 8 and a release in the form shown in paragraph 9 of this Consent Judgment. Upon receipt by the ADMINISTRATOR of a correctly completed Questionnaire and Release each RESTITUTION ELIGIBLE CUSTOMER will receive a refund in the form of a check for \$100 (one hundred dollars). The Questionnaire and Release will be available on the website of the Administrator.

8. The form of the questionnaire shall be as follows:

Ford Leasing Claims Administration Center  
c/o Gilardi & Co. LLC  
P.O. Box 8060  
San Rafael, CA 94912-8060  
Tel: 800-xxx-xxxx

### Questionnaire and Release

[Bar code] Claim #: LEV-123456-7

Changes/Corrections

[FIRST] [LAST]

\_\_\_\_\_

[NAME2]

\_\_\_\_\_

[ADDR1]

\_\_\_\_\_

[ADDR2]

\_\_\_\_\_

[CITY STATE ZIP]

\_\_\_\_\_

[Name of Joint Account Holder]

[Pre-print if date available]

This Questionnaire and Release is being sent to you in connection with the settlement of the litigation described in the accompanying Notice. You have been identified as a *potentially* qualified candidate for a refund of \$100. Certain Indiana Ford leasing customers who, after January 1, 1991, terminated a Ford car or truck lease before its expiration date are eligible for this payment.

To qualify for payment you must fully complete this Questionnaire and Release, sign it, and return it by **[date]**. Your response will then be evaluated to determine your eligibility for a payment.

1. Did you terminate your lease before it was due to end?

Yes \_\_\_\_\_ No \_\_\_\_\_

2. Before terminating the lease, did you get a quotation of the amount to pay off your remaining lease obligation directly from Ford Motor Credit Company or from the dealer?

a) I received a payoff quotation from Ford Motor Credit Company.

Yes \_\_\_\_\_ No \_\_\_\_\_

b) I received a payoff quotation from the dealer.

Yes \_\_\_\_\_ No \_\_\_\_\_

3. If you received a payoff quotation from the dealer, did you understand that the quotation you received included both (a) an amount to pay off your remaining lease obligation, and, (b) an amount subject to negotiation for the purchase of the car or truck?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Did you purchase the leased car or truck?

Yes \_\_\_\_\_ No \_\_\_\_\_

I certify that I am the person named in this Questionnaire and that to the best of my knowledge that the above information is true and correct:

\_\_\_\_\_  
Signature of Ford Leasing Customer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Ford Leasing Customer

\_\_\_\_\_  
Signature of Joint Account Holder (if any)

\_\_\_\_\_  
Printed Name of Joint Account Holder (if any)

Note: "Joint Account Holder" means that two or more persons such as a husband and wife signed the lease. If you are unable to obtain all required joint signatures, you may submit documents or other evidence of your claim and authority to receive a check and

sign a release. The Administrator shall determine whether your claim qualifies for a check.

THIS QUESTIONNAIRE AND RELEASE MUST BE RETURNED NO LATER THAN  
[DATE]

9. The form of the release shall be as follows:

**RELEASE**

I understand that I may be eligible for a payment in the amount of One Hundred Dollars (\$100) due to my early termination of a Ford Motor Credit Company vehicle lease. Whether I receive a check will depend on several factors.

In the event that I qualify for and receive a refund check I understand that acceptance of the check will constitute full settlement, compromise, waiver and release of any and all claims, legal and equitable, arising out or related to the early termination of the vehicle lease and my purchase or my attempt to purchase this leased vehicle upon early termination of the lease against Ford Motor Company, Ford Motor Credit Company, and the Ford or Lincoln-Mercury dealer where I leased the vehicle if and only if the Ford or Lincoln-Mercury dealer is a party to this Consent Judgment and all of their respective subsidiaries, parents, affiliates, officers, directors, employees, agents, and shareholders.

\_\_\_\_\_  
Signature of Ford Leasing Customer

\_\_\_\_\_  
Date and Place

\_\_\_\_\_  
Printed Name of Ford Leasing Customer

If the lease was signed by two or more persons (for example, husband and wife) both must sign this release form.

\_\_\_\_\_  
Signature of Ford Leasing Customer

\_\_\_\_\_  
Date and Place

\_\_\_\_\_  
Printed Name of Ford Leasing Customer

Note: Two signatures required if joint account.

#### **RESTITUTION FUNDING AND PROGRAM ADMINISTRATION**

10. All restitution and the costs of administration of the settlement shall be paid by Defendant FORD CREDIT. This restitution program shall be administered by the ADMINISTRATOR. On a business day that is no more than four months from the entry of this Consent Judgment, the ADMINISTRATOR shall mail to each POTENTIAL RESTITUTION ELIGIBLE CUSTOMER a Questionnaire and Release (paragraphs 8 and 9 respectively) advising that the Questionnaire and Release must be completed, executed, and returned to the ADMINISTRATOR by the business day that is eight months from entry of this Consent Judgment, or 60 days from the mailing of the packet, whichever is greater, in order to be eligible for restitution. In the event a packet sent to a POTENTIAL RESTITUTION ELIGIBLE CUSTOMER is returned undelivered to the ADMINISTRATOR, and a new address is provided by the U.S. Postal Service, the ADMINISTRATOR shall resend the packet. The date for return of the Questionnaire and Release to the ADMINISTRATOR shall be eight months from the entry of judgment or 60 days from the mailing of the packet, whichever is greater.

11. Within sixty (60) days after the date the Questionnaire and Release are due as provided in paragraph 10, the ADMINISTRATOR shall determine the number of RESTITUTION ELIGIBLE CUSTOMERS as follows: Each POTENTIAL RESTITUTION ELIGIBLE CUSTOMER who returns a fully and correctly completed



Questionnaire and Release shall be designated a RESTITUTION ELIGIBLE CUSTOMER. Upon a determination by the ADMINISTRATOR of the total number of RESTITUTION ELIGIBLE CUSTOMERS, and therefore the total amount of restitution due, the ADMINISTRATOR shall notify Defendant FORD CREDIT who shall immediately deliver to the ADMINISTRATOR by bank wire transfer the amount of the total restitution due. Thereafter, the ADMINISTRATOR shall deliver a \$100 (One Hundred Dollar) check to each RESTITUTION ELIGIBLE CUSTOMER. In the event that checks are returned undeliverable to the ADMINISTRATOR and he is unable to locate consumers entitled to the checks, those funds due such consumers shall be treated as unclaimed property in the possession of the State of Indiana pursuant to the Uniform Disposition of Unclaimed Property Act, Ind. Code §32-34-1-1 *et seq.* These funds may be delivered to the Treasurer of the State of Indiana. The ADMINISTRATOR shall provide a report to the Attorney General within six (6) months of the entry of the order which details the amount delivered to the Treasurer for treatment as unclaimed property under the state statute. The ADMINISTRATOR shall continue to provide this information every six (6) months until all funds have been claimed and/or returned to the ADMINISTRATOR. The ADMINISTRATOR shall provide all information necessary to the state Treasurer's office to appropriately handle such funds as unclaimed property as set forth by statute and regulation.

#### **DUTIES OF THE ADMINISTRATOR**

12. The ADMINISTRATOR is an Officer of the Court and is responsible for the coordination of the Restitution Program with the full and complete cooperation of all parties to this Consent Judgment.

13. The ADMINISTRATOR shall establish a toll-free telephone number for use by POTENTIAL RESTITUTION ELIGIBLE CUSTOMERS in connection with the Restitution Program. The toll-free telephone number shall be prominently displayed on all correspondence and notices issued by the ADMINISTRATOR regarding the program. The ADMINISTRATOR shall handle all telephone inquiries during business hours by live operator and not by recorded message. The ADMINISTRATOR as necessary shall make Spanish-speaking personnel available.

14. Documents sent by the ADMINISTRATOR to POTENTIAL RESTITUTION ELIGIBLE CUSTOMERS as part of the Restitution Program shall include clear and conspicuous notices in Spanish informing the recipients that all such documents are available to POTENTIAL RESTITUTION ELIGIBLE CUSTOMERS in Spanish upon request by calling the toll-free telephone number.

15. The ADMINISTRATOR shall be responsible for, among other things, the collection of all funds and documents necessary for distribution of restitution, and the distribution of restitution checks. The ADMINISTRATOR shall provide a report to the Indiana Attorney General and Defendant FORD CREDIT detailing the following, at the conclusion of the restitution program, in a format and medium to be agreed upon by Defendant FORD CREDIT and Plaintiff, setting forth:

- a. The number of completed and executed Questionnaire and Releases received from POTENTIAL RESTITUTION ELIGIBLE CUSTOMERS;
- b. The identity of POTENTIAL RESTITUTION ELIGIBLE CUSTOMERS qualifying as RESTITUTION ELIGIBLE

CUSTOMERS and the amount of restitution distributed by check;  
and

- c. Such other information as Defendant FORD CREDIT and the Plaintiff specify.

16. The ADMINISTRATOR shall also provide a quarterly statement of its reasonable fees and expenses incurred in connection with the Restitution Program to Defendant FORD CREDIT and Plaintiff. For the twelve months following the entry of this Consent Judgment, Defendant FORD CREDIT, within thirty (30) days after receipt from the ADMINISTRATOR of appropriate documentation, shall reimburse the ADMINISTRATOR for its actual and reasonable fees and expenses administering the settlement.

17. With the prior written permission of Defendant FORD CREDIT and Plaintiff, the ADMINISTRATOR may employ such persons as are necessary to carry out the duties described herein.

18. A representative of the ADMINISTRATOR shall meet and confer with representatives of Defendant FORD CREDIT and Plaintiff as often as necessary in order to monitor and audit the Restitution Program properly. Problems that arise concerning the implementation of the Restitution Program may be resolved by agreement between Defendant FORD CREDIT and Plaintiff and the ADMINISTRATOR without further court order. In the event a dispute arises that cannot be resolved between Defendant FORD CREDIT and Plaintiff and the ADMINISTRATOR, Defendant FORD CREDIT, Plaintiff or the ADMINISTRATOR may petition the Court for resolution.

19. Within ten (10) days following the entry of the Judgment, Defendant FORD CREDIT shall pay Plaintiff, State of Indiana, TWELVE THOUSAND EIGHT HUNDRED TWENTY DOLLARS and FIFTY-ONE CENTS (\$12,820.51), payable to the Office of the Attorney General Consumer Protection Division Consumer Fund for consumer education, litigation, enforcement and other consumer protection purposes, at the discretion of the Attorney General.

20. Each Ford or Lincoln-Mercury Dealer that executes this Consent Judgment regarding Ford/Lincoln-Mercury Dealers shall, upon approval of the Consent Judgment pertaining to such dealer, make a payment to the ADMINISTRATOR, which, in turn, shall remit the aggregate amount to Plaintiff payable to the Office of the Attorney General in an amount pursuant to the following formula:

- a. For each dealer with RCL outstandings of \$10,000,000 or less, the sum of \$3,500;
- b. For each dealer with RCL outstandings of \$10,000,000 and less than \$25,000,000, the sum of \$6,000; and
- c. For each dealer with RCL outstandings of \$25,000,000 or more, the sum of \$8,000.

" Red Carpet Lease Outstanding" and/or "RCL Outstanding" shall be defined to mean the total dollar amount of RCL contracts executed by the Dealer and assigned to Ford Motor Credit Company that are open accounts as of December 31, 2001. This payment shall be used by the Attorney General for consumer education, litigation, enforcement, restitution, and other consumer protection purposes.

21. The Attorney General shall not institute any further proceedings or take any further action against Defendants under Indiana law for the activities referenced in Plaintiffs Complaint, up to and including the date of approval of this Consent Judgment, as long as Defendants are in compliance with the terms of the Consent judgment.

22. Notwithstanding any other provision of this Consent Judgment or of any law, this Consent Judgment shall not constitute (a) an admission by Defendants of, or a determination of, any liability with respect to the allegations of the complaint or otherwise; (b) an admission by Defendants of, or a determination of, any fact or point of law; and/or (c) an admission by Defendants that, or a determination that, any action should proceed on a class basis or otherwise in a representative capacity.

23. Jurisdiction is retained for the purpose of enabling any party to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Consent Judgment, for modification of the injunctive provisions hereof, for the enforcement and compliance herewith, and for the punishment of violations hereof.

24. This Consent Judgment, including the permanent injunction terms contained herein, shall take effect immediately upon the entry thereof.

DATED: \_\_\_\_\_

FORD MOTOR CREDIT COMPANY, a Delaware Corporation, et al

Defendants.

Ann O. Lee *gla*

Curtis W. McCauley *CW McCauley*

Curtis W. McCauley (#16456-49)

ICE MILLER

One American Square

Box 82001

Indianapolis, Indiana 46282-0002

(317) 236-2100

Attorneys for Ford Motor Credit Company

STEVE CARTER

Indiana Attorney General

By: Mary Ann Wehmuehler

Mary Ann Wehmuehler, 15251-49A

Deputy Attorney General

Maw:74616

JUN 21 2004

ENTERED: \_\_\_\_\_

BY: \_\_\_\_\_

Judge Marion County \_\_\_\_\_ Court

DATED: \_\_\_\_\_

~~IN~~ INDIANA

Defendant Advantage Ford L-M Sales & Service Inc. hereby stipulates to  
entry of Consent Judgment as provided by this Stipulation for Entry of Consent  
Judgment.

DATED: 5/14/04

DEALER NAME: Advantage Ford L-M Sales & Service, Inc.

By: Clarence F. Warren  
(Signature)

Name:  
Clarence F. Warren  
Title:  
President

INDIANA

Defendant Barile Ford, Inc. hereby stipulates to  
entry of Consent Judgment as provided by this Stipulation for Entry of Consent  
Judgment.

DATED: 5/10/04

DEALER NAME: John Barile, Jr.

By:   
(Signature)

Name:

John Barile, Jr.

Title:

President



INDIANA

Stipulation for Entry of Consent Judgment

Defendant TOWN & COUNTRY FORD, INC. hereby

stipulates to entry of the Consent Judgment Pursuant to Stipulation as provided by this Stipulation  
for Entry of Consent Judgment.

DATED: 5-11-04

DEALER NAME: TOWN & COUNTRY FORD, INC. - EVANSVILLE

By: Stephen D. Patton  
(Signature)

Name: STEPHEN D. PATTON

Title: GEN. MGR